

MOTION FILED !
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-753

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,**

Petitioner,

v.

JOHN DANIEL,

Respondent.

No. 77-754

LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LOUIS F. PEICK,

Petitioners,

v.

JOHN DANIEL,

Respondent.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**MOTION OF AMERICAN BAR ASSOCIATION FOR RECONSIDERATION
BECAUSE OF EXTENUATING CIRCUMSTANCES TO REVIEW
ORDER OF JULY 3 DENYING MOTION FOR LEAVE TO FILE A
BRIEF AMICUS CURIAE**

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The American Bar Association respectfully moves for reconsideration of this Court's recent order denying leave to file a brief *amicus curiae* in the above-entitled actions. Leave was originally requested on the ground that the Association is in a position to assist the Court with respect to the issue presented: whether pensions negotiated within the framework of collective bargaining are subject to the federal statutes regulating securities.

Pursuant to Rule 42(2) of the Revised Rules of this Court, consent to the filing of this brief was requested of the parties but was refused by counsel for respondent.

Leave to file the brief was originally sought from the Court on June 22, 1978, but denied by order of July 3, 1978, without explanation but apparently because it was considered as untimely. Because of the serious nature of the issue before the Court in this case, and the fact that no other *amicus* who has sought leave of Court has been denied such permission, the American Bar Association now renews its motion to the Court. The Association acknowledges the apparent untimeliness thereof but urges extenuating circumstances which prevented it from filing such brief earlier and warranting special consideration for granting its motion at this point, particularly in the absence of prejudice to any party to the case or undue burden to the Court.

The American Bar Association does not lightly file *amicus* briefs in the Supreme Court and it takes an issue of serious magnitude which would start into motion the laborious and time-consuming notice and consultation procedures necessary to permit such action. The present case is of such concern.

The Court granted the petition for certiorari on February 21, 1978. The Section of Labor Relations Standing Committee on Pension and Welfare Plans, at its midwinter meeting in late March, passed a resolution urging the Section to take affirmative steps to present its views in the case. Accordingly, the Executive Council of the Section on April 28, 1978, instructed the Chairman, Jay S. Siegel, to take the necessary steps to secure Board of Governors approval for permission to file an *amicus* brief with the Court.

Under the policy and procedures of the Association, a detailed application must be filed with the Secretary of the Association for approval by the Board of Governors. At the time of filing of such application, other interested Sections of the Association must be given notice of the application and offered an opportunity for consultation on the matter. In this particular instance, the Board of Governors specifically requested the Section of Labor Relations to consult with the Taxation and the Corporation, Banking and Business Sections for their views on the proposed *amicus* brief.

In addition, since the Brief is being filed in the name of the Association, it must be submitted to a "special committee of three members expert in appellate procedures and learned in brief writing" appointed annually by the President of the Association. This committee is composed of Professor Archibald Cox of Harvard Law School, Erwin Griswold of Washington, D.C., and Professor Robert Stern of Northwestern University Law School. Two of the members of the special committee are former Solicitors General of the United States. Professor Stern disqualified himself because of a potential conflict of interest.

After extensive discussions extending over several weeks with the other two Sections and the special committee, the version of the brief filed with the Court was approved. The Board of Governors gave its approval at its meeting on June 10, 1978.

It is highly unlikely that any of the other organizations that have sought leave in this case to file *amicus* briefs had to endure a procedure such as the one outlined above to produce the brief filed by the Association.

The Respondent has been granted additional time and now must file his brief on August 7, 1978. Since a copy

of the Association's brief was served on the Respondent on June 21, he will have had the benefit of the ABA position for nearly seven weeks while preparing his own brief, and thus would not be prejudiced by any untimely filing. Likewise the Court will not be unduly burdened as the case will not be argued until the October Term.

Accordingly, the American Bar Association asks special leave of the Court for permission to file its proposed brief as *amicus curiae* notwithstanding its untimely filing.

August 7, 1978

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